

AMENDED IN SENATE AUGUST 20, 2010
AMENDED IN SENATE SEPTEMBER 4, 2009
AMENDED IN SENATE AUGUST 17, 2009
AMENDED IN SENATE JUNE 25, 2009
AMENDED IN ASSEMBLY MAY 5, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1012

Introduced by Assembly Member V. Manuel Pérez
(Coauthors: Assembly Members Fuentes, Galgiani, and Nielsen)

February 27, 2009

~~An act to add Section 11546.1 to the Government Code, relating to broadband services, and declaring the urgency thereof, to take effect immediately. An act to add Section 2099.10 to the Fish and Game Code, relating to energy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1012, as amended, V. Manuel Pérez. ~~Broadband communications.~~
Energy: renewable resources: endangered species.

The Warren-Alquist State Energy Resources Conservation and Development Act establishes the State Energy Resources Conservation and Development Commission (Energy Commission), and requires it to certify sufficient sites and related facilities that are required to provide a supply of electricity sufficient to accommodate projected demand for power statewide. The act grants the Energy Commission the exclusive authority to certify any stationary or floating electrical generating facility using any source of thermal energy, with a generating

capacity of 50 megawatts or more, and any facilities appurtenant thereto. Existing law requires the Energy Commission to establish a process for certain applicants for certification of a solar thermal powerplant that are proposed to be constructed in the planning area for the Desert Renewable Energy Conservation Plan, as defined, that allows the applicant to elect to pay additional fees to be used by the Energy Commission to contract with 3rd parties to assist the Energy Commission staff in performing the analysis otherwise performed by staff in determining whether or not to issue a certification.

The California Endangered Species Act (CESA) requires the Fish and Game Commission to establish a list of endangered species and a list of threatened species, and requires the Department of Fish and Game to recommend, and the commission to adopt, criteria for determining if a species is endangered or threatened. CESA authorizes the department to authorize the take of threatened species, endangered species, or candidate species by permit if certain requirements are met. CESA authorizes the department, in consultation with the Energy Commission and, to the extent practicable, the United States Fish and Wildlife Service and the United States Bureau of Land Management, to design and implement actions to protect, restore, or enhance the habitat of plants and wildlife that can be used to fully mitigate the impacts of the take of endangered, threatened, or candidate species (mitigation actions) resulting from certain solar thermal and photovoltaic powerplants in the planning area of the Desert Renewable Energy Conservation Plan.

Existing law requires the department to collect, and requires the owner or developer of certain solar thermal powerplants or photovoltaic powerplants to pay, a one-time permit application fee of \$75,000. Existing law requires the department to utilize the permit application fee to pay for all or a portion of the department's cost of processing incidental take permit applications pursuant to CESA.

This bill would require the department to collect, and an owner or developer of an eligible project to pay, a one-time permit application fee of \$75,000 to the department, to pay for all or a portion of the department's cost of processing incidental take permit applications. The bill would define "eligible project" to mean an eligible renewable energy resource as defined in the California Renewables Portfolio Standard. If the permit application fee is insufficient to complete permitting work due to the complexity of a project or timeline delays, the bill would authorize the department to collect an additional fee from

the owner or developer to pay for its actual costs, not to exceed an additional \$75,000.

~~Existing law establishes, until January 1, 2013, the office of the State Chief Information Officer, within the Governor's cabinet, with the State Chief Information Officer having specified duties in creating and managing the technology policy of the state.~~

~~This bill would require the State Chief Information Officer to establish a strategy to maximize federal funding opportunities pursuant to the federal American Recovery and Reinvestment Act of 2009 (Recovery Act) and the federal Broadband Data Improvement Act that are directed for broadband-related activities, programs, or projects. The bill would require the State Chief Information Officer, no later than 30 days after the effective date of this bill, to develop the strategy and require that the strategy include specific information for purposes of broadband development and deployment in the state and the obtaining of federal funding for those purposes. The State Chief Information Officer would be required to submit the strategy to the relevant policy and fiscal committees in each house of the Legislature within 30 days of the preparation of the strategy. The bill would require the State Chief Information Officer to administer, expend, and distribute broadband-related funding received under the Recovery Act in a manner consistent with federal law and specified policy goals.~~

~~The bill would require the Public Utilities Commission, as the designated recipient for a grant under the federal State Broadband Data and Development Grant Program of the Broadband Data Improvement Act, to administer and expend funding received under that program in a manner consistent with federal and state law.~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

~~Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.~~

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2099.10 is added to the Fish and Game
- 2 Code, to read:
- 3 2099.10. (a) The department shall collect a permit application
- 4 fee from the owner or developer of an eligible project to support
- 5 its permitting of eligible projects pursuant to this chapter. The
- 6 owner or developer of a proposed eligible project shall pay a

1 *one-time permit application fee of seventy-five thousand dollars*
2 *(\$75,000) to the department. For purposes of this section, an*
3 *“eligible project” means an eligible renewable energy resource*
4 *as defined in the California Renewables Portfolio Standard (Article*
5 *16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of*
6 *Division 1 of the Public Utilities Code).*

7 *(b) The department shall collect the permit application fee, at*
8 *the time the owner or developer submits its permit application or,*
9 *for eligible projects for which an application has already been*
10 *submitted, within 30 days of the operative date of this section. The*
11 *department shall utilize the permit application fee to pay for all*
12 *or a portion of the department’s cost of processing incidental take*
13 *permit applications pursuant to subdivision (b) of Section 2081*
14 *and Section 2080.1. If the permit application fee is insufficient to*
15 *complete permitting work due to the complexity of a project or*
16 *timeline delays, the department may collect an additional fee from*
17 *the owner or developer to pay for its actual costs, not to exceed*
18 *an additional seventy-five thousand dollars (\$75,000).*

19 *(c) For an eligible project seeking site certification, pursuant*
20 *to Chapter 6 (commencing with Section 25500) of Division 1 of*
21 *the Public Resources Code, by the Energy Commission, the owner*
22 *or developer shall pay the permit application fee directly to the*
23 *department. The permit application fee paid to the department*
24 *shall fund the department’s participation in the Energy*
25 *Commission’s site certification process as the state’s trustee for*
26 *natural resources. The permit application fee shall be in addition*
27 *to any application fees collected by the Energy Commission. The*
28 *permit application fee shall be due and payable within 30 days of*
29 *the operative date of this section. As used in this subdivision,*
30 *“Energy Commission” has the same meaning as defined in Section*
31 *2099.*

32 *(d) The permit application fees paid pursuant to this section*
33 *shall be proportional to the cost incurred by the department, and*
34 *shall be annually reviewed and adjustments recommended to the*
35 *Legislature in an amount necessary to pay the full costs of*
36 *department programs as specified. The fees shall be deposited in*
37 *the Fish and Game Preservation Fund, and shall be eligible for*
38 *expenditure by the department pursuant to subdivision (b) of*
39 *Section 2081 and Section 2080.1.*

1 (e) *If an owner or developer withdraws a project within 30 days*
2 *after paying the permit application fee, the department shall refund*
3 *any unused portion of the fee to the owner or developer.*

4 ~~SECTION 1. The Legislature finds and declares all of the~~
5 ~~following:~~

6 ~~(a) In October 2006, Governor Arnold Schwarzenegger~~
7 ~~commissioned through Executive Order S-23-06, the California~~
8 ~~Broadband Task Force to “remove barriers to broadband access;~~
9 ~~identify opportunities for increased broadband adoption, and enable~~
10 ~~the reaction and development of new advance communication~~
11 ~~technologies.” After more than a year of work, the task force issued~~
12 ~~a report titled “The State of Connectivity: Building Innovation~~
13 ~~Through Broadband” that maps current broadband availability and~~
14 ~~speed, makes recommendations to achieve universal broadband~~
15 ~~access and increased usage, and a timeframe in which to meet~~
16 ~~these critical goals. While the report shows terrific progress for~~
17 ~~the state, there is still more work to be done, because nearly 2,000~~
18 ~~communities are still unable to access high-speed Internet, only~~
19 ~~one-half of Californians have access to broadband at speeds greater~~
20 ~~than 10 megabits per second (Mbps), and even though availability~~
21 ~~rates are at 96 percent, just over one-half of California households~~
22 ~~use broadband.~~

23 ~~(b) In 2008 the Legislature created the California Advanced~~
24 ~~Services Fund in order to spur deployment of broadband~~
25 ~~infrastructure in both rural and urban unserved and underserved~~
26 ~~areas within the state, and encouraged a statewide policy to~~
27 ~~promote broadband throughout the state.~~

28 ~~(c) On February 17, 2009, the federal American Recovery and~~
29 ~~Reinvestment Act of 2009 (Public Law 111-5; hereafter the~~
30 ~~Recovery Act) was signed into law by President Barack Obama.~~
31 ~~The act requires the Federal Communications Commission to~~
32 ~~develop a National Broadband Plan, and contains two new funding~~
33 ~~programs: (1) the Broadband Technology Opportunities Program~~
34 ~~under the National Telecommunications and Information~~
35 ~~Administration and (2) the Rural Development Broadband Program~~
36 ~~under the United States Department of Agriculture’s Office of~~
37 ~~Rural Development, Rural Utilities Service.~~

38 ~~(d) The Recovery Act authorizes \$4.7 billion for the National~~
39 ~~Telecommunications and Information Administration for the~~
40 ~~Broadband Technology Opportunities Program, and appropriates~~

~~\$2.5 billion to Rural Utilities Service to extend loans, loan and grant combinations, and grants to projects where at least 75 percent of a Rural Utilities Service funded area is in a rural area that lacks sufficient access to high-speed broadband service in order to facilitate rural economic development. Funding for each program must be awarded by September 30, 2010. Up to \$350 million is authorized under the Recovery Act to fund the State Broadband Data and Development Grant Program authorized by the Broadband Data Improvement Act of 2008 (Title I of Public Law 110-385; hereafter the Broadband Data Improvement Act).~~

~~(e) In fulfilling the state's role, pursuant to the Notice of Funds Availability and solicitation of applications for the Broadband Technology Opportunities Program and Broadband Initiatives Program, the Chief Information Officer, on behalf of the Governor, is required to submit to the appropriate federal entities a prioritization of recommended state projects, along with an explanation of why the selected proposals meet the greatest needs of the state. In furthering the state's role, the Governor, in a letter dated July 21, 2009, designated the Public Utilities Commission as the single entity in California to receive a grant under Section 106(i)(2) of the Broadband Data Improvement Act.~~

~~(f) As funding awarded pursuant to the above-described federal programs is expected to be allocated through a series of requests for proposals prior to the conclusion of the program on September 30, 2010, it is incumbent on the state to have a comprehensive and multiphased strategy to assist California applicants in obtaining these funds.~~

~~SEC. 2. Section 11546.1 is added to the Government Code, to read:~~

~~11546.1. (a) The State Chief Information Officer, in addition to serving on the Governor's California Federal Stimulus Task Force, shall establish a strategy to maximize federal funding opportunities pursuant to the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5) and the Broadband Data Improvement Act (Title I of Public Law 110-385) that are directed for broadband-related activities, programs, or projects. These broadband-related activities, programs, and projects include the State Broadband Data and Development Grant Program, the Broadband Initiatives Program (BIP), and the Broadband Technologies Opportunities Program (BTOP).~~

1 ~~(b) The State Chief Information Officer, no later than 30 days~~
2 ~~after the effective date of this section, utilizing any information in~~
3 ~~the Notice of Funds Availability and solicitation of applications~~
4 ~~for each program, shall develop the strategy, which shall include~~
5 ~~all of the following:~~

6 ~~(1) Specific actions that should be taken to maximize both the~~
7 ~~amount of federal broadband-related funding to the state and the~~
8 ~~number of California applicants.~~

9 ~~(2) Specific actions needed to facilitate broadband deployment~~
10 ~~in California's rural areas, facilitate deployment of broadband~~
11 ~~infrastructure in unserved and underserved areas, enhance~~
12 ~~broadband capacity at public computer centers, and promote~~
13 ~~sustainable broadband adoption projects.~~

14 ~~(3) A specific process for prioritizing state projects for BTOP~~
15 ~~and BIP funding and appropriate sources used to determine how~~
16 ~~individual selected proposals meet the greatest needs of the state.~~

17 ~~(4) Identification of the specific roles of the State Chief~~
18 ~~Information Officer, the Public Utilities Commission, the California~~
19 ~~Emerging Technology Fund, and any other state entity that is~~
20 ~~necessary to carry out the specific actions recommended in the~~
21 ~~strategy.~~

22 ~~(5) Identification of the specific state resources, if any, that may~~
23 ~~be utilized to leverage federal funds.~~

24 ~~(6) A description of the state's role, if any, in the development~~
25 ~~of the federal Broadband Plan.~~

26 ~~(7) Identification of other key public and private community~~
27 ~~development partners and their respective roles and areas of~~
28 ~~expertise, necessary statutory or regulatory changes, and needed~~
29 ~~resources to accomplish the strategy.~~

30 ~~(8) Identification of key tasks, timelines, and monitoring~~
31 ~~processes.~~

32 ~~(c) The State Chief Information Officer shall submit the strategy~~
33 ~~developed pursuant to this section to the relevant policy and fiscal~~
34 ~~committees of each house of the Legislature within 30 days of the~~
35 ~~preparation of the strategy.~~

36 ~~(d) To the extent permitted by law, the State Chief Information~~
37 ~~Officer shall consult with the Office of Planning and Research to~~
38 ~~provide guidance to applicants and to help expedite permits~~
39 ~~required for the deployment of broadband infrastructure projects~~
40 ~~and the meeting of deadlines pursuant to the Notice of Funds~~

1 Availability and solicitation of applications for the BTOP and the
2 BIP funding in the federal American Recovery and Reinvestment
3 Act of 2009.

4 (e) ~~The State Chief Information Officer , in consultation with~~
5 ~~the Public Utilities Commission, shall administer, expend, and~~
6 ~~distribute broadband-related funding, received under the federal~~
7 ~~American Recovery and Reinvestment Act of 2009, in a manner~~
8 ~~consistent with federal law and the goals of the California~~
9 ~~Broadband Task Force, the California Advanced Services Fund,~~
10 ~~established pursuant to Section 281 of the Public Utilities Code,~~
11 ~~and the California Emerging Technology Fund, a nonprofit public~~
12 ~~benefit corporation established pursuant to Public Utilities~~
13 ~~Commission Decision 05-11-028.~~

14 (f) ~~The Public Utilities Commission, as the designated recipient~~
15 ~~for a grant under the federal State Broadband Data and~~
16 ~~Development Grant Program, shall administer and expend funding~~
17 ~~received under that program in a manner consistent with federal~~
18 ~~and state law.~~

19 SEC. 3. ~~This act is an urgency statute necessary for the~~
20 ~~immediate preservation of the public peace, health, or safety within~~
21 ~~the meaning of Article IV of the Constitution and shall go into~~
22 ~~immediate effect. The facts constituting the necessity are:~~

23 ~~In order to develop a strategy, at the earliest possible time, for~~
24 ~~providing broadband access to unserved and underserved areas in~~
25 ~~the state, it is necessary that this act take effect immediately.~~